



FEDERAL & STATE LAWS AFFECTING GROUP HOMES



OUTLINE

- **What Are Group Homes?**
- **Federal and State Fair Housing Laws**
- **Licensed v. Unlicensed v. Single Household**
- **Other State Laws**
- **Some Key Burbank Issues**
- **Opportunities for Questions/Comment**



GROUP HOMES



POPULAR DEFINITION OF GROUP HOMES

- Groups of unrelated people living together



TYPES OF GROUP HOMES

- Care Facility (small & large; licensed and unlicensed)
- Boarding House
- Club (fraternity/sorority)
- Students or Others Living Together
- Emergency Shelter(temporary/permanent)
- Transitional and Supportive Housing
- Sober Living Residence



FEDERAL & STATE FAIR HOUSING LAWS



FAIR HOUSING ACT

- **Part of Civil Rights Act of 1968**
- **Prohibits housing discrimination based on disability, family status, ethnicity, many other bases**
- **Applies to local land use decisions**
- **FEHA is State parallel law**



DEFINITION- PERSON WITH DISABILITIES

**Includes person who has physical or
mental impairments that:**

- limit one or more major life activities
- is regarded as having that type of impairment
- has a record of that type of impairment



DEFINITION- PERSON WITH DISABILITIES

Includes:

Recovering drug & alcohol user

Excludes:

Current illegal use of or addiction to a controlled substance

Alcohol is NOT a controlled substance



FACIAL DISCRIMINATION

Strict Legal Standard

Will be upheld by Court only if:

- Restriction *benefits* the disabled; OR
- Ordinance responds to legitimate safety concerns, rather than based on stereotypes



COMMUNITY HOUSE V. CITY OF BOISE

9th Circuit Court of Appeals

- Homeless shelter for men only
- Gender/family status facial discrimination
- Court struck down because:
 - * No benefit to women & children
 - * Not based on legitimate safety concerns regarding mixed sexes



FACIALLY DISCRIMINATORY LAND USE REQUIREMENTS

Examples:

- Spacing requirements
- Use permit required for housing for persons with disabilities only
- Special noticing for permits for homes serving the disabled (e.g., drug or alcohol rehab group homes)



FACIALLY-NEUTRAL ORDINANCES WITH DISCRIMINATORY INTENT

*Actions that are outwardly-neutral but
adopted with discriminatory intent*

Examples:

- Denial of use permit for group home serving disabled on grounds of traffic problems
- Evidence shows action actually motivated by discrimination
- Traffic concerns are a mere pretext



DISCRIMINATORY INTENT LEGAL STANDARD

- Discriminatory reason more likely than not motivated City's decision
- Bona fide health & safety justification?
- Court looks at record including:
 - Discriminatory statements by public officials
 - Citizen comments and letters

Pacific Shores v. City of Newport Beach



REASONABLE ACCOMMODATION

*Affirmative duty to modify local
zoning requirements when:*

- Necessary to provide disabled person equal opportunity for home; and
- Does not impose undue financial and administrative burden; nor
- Fundamentally alter City's zoning



REASONABLE ACCOMMODATION

Examples:

- Elevator in side yard setback
- Wheelchair ramp in front yard setback

But Not:

- Large multi-family structure in single-family neighborhood



LICENSED & UNLICENSED GROUP HOMES



LICENSED GROUP HOMES 6 OR FEWER

- Virtually any *licensed* facility
- Must be treated like a single-family home
- Some separation requirements but:
 - No separation requirements for licensed drug & alcohol rehab facilities or facilities for the elderly*



LICENSED GROUP HOMES 7 OR MORE

May require a use permit for 7+ residents or clients but:

Psychiatric facilities must be permitted in a zone that permits nursing homes and hospitals



UNLICENSED GROUP HOMES

What might be an unlicensed group home?

- Boarding house
- Sober living facility
- Transitional housing
- Supportive housing
- Groups of students and others



UNLICENSED GROUP HOMES

Cannot limit the number of unrelated people living as a household

(Adamson v. City of Santa Barbara)

- What does it mean to live as a household?
- Regulating use versus the occupants



UNLICENSED GROUP HOMES

Cannot limit the building occupancy
below the Building Code limits

(Briseno v. City of Santa Ana)



UNLICENSED GROUP HOMES

Boarding House or Household?

Some tests:

- Physical design; access to common areas
- All on the lease (86 Ops.Att'y Gen.30)
- No limits on time in the residence
- Shared housekeeping & expenses
- Residents select occupants

Regulating the *use* or the *occupants*?



EXERCISING LAND USE POWER

*May Not Discriminate Based On:
(Government Code Section 65008)*

- Race, sex, religion, family status, disability
- Financing or other government assistance
- Intended occupancy by low- or moderate-income

Local government prohibited from treating affordable housing projects different than market rate projects.



REMOVING ZONING CONSTRAINTS – HOUSING ELEMENT

- Analyzing constraints on housing for disabled
- Adopting reasonable accommodation ordinances



SUPPORTIVE & TRANSITIONAL HOUSING

Some group homes may be considered to be “supportive” or “transitional” housing

Transitional housing is:

- Rental housing
- Stays of at least six months
- Program calls for recirculation of unit to another at a pre-determined time



SUPPORTIVE & TRANSITIONAL HOUSING

Supportive housing is:

- No limit on length of stay
- Linked to on-site or off-site services
- Occupied by either low-income disabled adults, or
- Occupied by individuals with disabilities diagnosed before age of 18



SUPPORTIVE & TRANSITIONAL HOUSING

In Housing Element constraints section:

“Transitional housing and supportive housing shall be considered a residential use of property, and shall be subject to only those restrictions that apply to other residential dwellings of the same type in the same zone.” (G.C. 65583(a)(5))



HOUSING ACCOUNTABILITY ACT

- Protects transitional and supportive housing
- In general, difficult to deny transitional and supportive housing or make infeasible



CONCLUSIONS

IF LICENSED:

- Six (6) or under must be treated like a single unit
- Use permit may be required for seven (7) or more (*note psychiatric facilities*)



CONCLUSIONS

IF UNLICENSED:

- Is it operated as a single household?
- Is it supportive or transitional housing?



CONCLUSIONS

IF NOT IN ANY OF THESE CATEGORIES:

May be reasonably regulated so long as:

- Regulations not adopted with intent to discriminate; and
- Not treated differently than homes for non-disabled.

BUT: Facilities for the disabled may *always* request a “reasonable accommodation.”



SOME KEY BURBANK ISSUES



SOME KEY ISSUES

BOARDING HOUSE vs. HOUSEHOLD

- Review definitions of:
 - “boarding house” (may be regulated)
 - “household” (can’t be regulated)



SOME KEY ISSUES

TRANSITIONAL AND SUPPORTIVE **HOUSING**

- Revise transitional/supportive housing definitions to mirror State law



SOME KEY ISSUES

UNLICENSED COMMUNITY CARE FACILITIES AND SOBER LIVING FACILITIES FOR 6 AND UNDER

- Consider standards that would protect residents of the facilities and the community.



SOME KEY ISSUES

PAROLEE/PROBATIONER HOMES

- Consider appropriate regulations.



SOME KEY ISSUES

STANDARDS FOR REASONABLE ACCOMMODATIONS

- Possibly clarify standards.



NEXT STEPS

- Identify 'quick wins' and bring forward
- Work to identify options for additional ordinance amendments
- Community meeting(s)
- Public hearings with Planning Commission and City Council



QUESTIONS AND COMMENTS